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May 12, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Re: Implementation of Sections 11 and 13 of the
Cable Television Consumer Protection Act
of 1992; Horizontal and Vertical Ownership
Limits
(MM Docket No. 92-264)

Dear Ms. Searcy:

The Satellite Broadcasting and Communications Association (SBCA) is pleased to submit to the Commission its Reply Comments in the above-referenced proceeding. As the Commission is aware, satellite delivery of video programming Direct-To-The Home is considered an "emerging technology." As the national trade association which represents the DTH industry, SBCA has participated in every major FCC proceeding dealing with video competition, as well as those mandated by the 1992 Cable Act. This rulemaking, particularly because it affects the development and creation of new programming, is an important one to the DTH industry, and we take this opportunity to present to the Commission our views on certain aspects of this important facet of the video delivery business.

The membership of the SBCA encompasses every industry segment which plays a part in the delivery of television programming to consumers owning satellite receiving systems. It includes the owners and operators of both C and Ku-Band satellites; the DBS services which are now in operation or about to launch; the video programmers who offer subscription services to viewing households; the manufacturers of receiving equipment and hardware; and the distributors and dealers who market systems and software to consumers at the retail level.

SBCA's principal concern in this proceeding is that the Commission not create disincentives to continued investment in new programming which, in its turn, enhances market place competition. The Commission has already dealt

Satellite Broadcasting and Communications Association

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with the issue of access to programming through the recently concluded rulemaking on Program Access in which SBCA participated. The regulations adopted in that proceeding are designed to foster a vigorously competitive market place in which consumers utilizing differing video technologies will enjoy multiple options for receiving a large number of diverse, high quality program services.

The Cable Act also mandated that the Commission "Consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of video programming." (Sec. 613[f][1][C]) We would like to address this issue briefly because the "creation or production" of video programming is an important element in today's video market place.

The success of any video delivery technology, of course, is programming, and not the technology itself. The significant progress that the DTH industry has made - and the opportunities which Direct Broadcast Satellite services will offer to the public - are or will be software-driven. Therefore it is in the best interest of the satellite industry, and in fact all video distribution technologies, that the regulatory structure supports and encourages the development of new programming. **It is important that new program development can flourish, given the explosive growth in demand for programming which we anticipate will result from the advent of digital compression for cable and satellite. SBCA would not favor regulations that have the effect of discouraging or reducing incentives to invest in programming.**

Both Congress and the Commission have recognized that vertical and horizontal integration creates incentives to invest in programming. The policy objective is to create a competitive marketplace where programming flourishes and consumers have multiple competitive distribution options, not to drive cable operators out of programming investment. **Detering cable operators from investing in programming would harm not only the cable industry, but also non-cable distribution technologies, programmers, and, most importantly, consumers.** The access rules adopted by the Commission are designed to ensure a "level playing field" in program distribution and diminish the need for restrictive limits on horizontal and vertical integration. We fear that such limits would have a chilling effect on investment in program "creation or production."

This is important because the cable industry has been a significant factor in the development of much of the programming consumers enjoy today, and the satellite industry has benefited from the marketing of those services. Clearly, it would not be in the public interest, or in the interest of other distribution technologies, for the Commission to adopt rules that would be repressive. In fact, we

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would fear that without cable's investment, program development would become severely limited, or, worse yet, forfeited to other parties who would not have the same vested interest in seeing the programming succeed. That, in turn, might leave foreign capital as the single major source of program creation.

SBCA is also concerned with the precedential nature of the ownership regulations at issue in this proceeding. Clearly, the vertical and horizontal limits required by Section 11 are to be applied only to cable operators. However, if ownership restrictions are appropriate for one distribution technology, some may argue that they should be applied to all competitive technologies. SBCA would strongly oppose application of such regulations to DBS, for example, as counterproductive to competition and consumer welfare.

In conclusion, SBCA urges the Commission to recognize that strong incentives to programming investment are critical to the continued growth and development of all video distribution media. The Commission has discretion under Section 11 to avoid overregulation that would diminish such incentives. Instead of imposing strict limits now, we would urge the Commission to monitor the rapidly changing program market place in order to guide it in determining any such restrictions today or in the future.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew R. Paul", with a long horizontal flourish extending to the right.

Andrew R. Paul
Senior Vice President